



Comptroller General
of the United States

509184

Washington, D.C. 20548

Decision

Matter of: Piaggio Aviation, Inc.

File: B-256969

Date: April 18, 1994

DECISION

Piaggio Aviation, Inc. protests the proposed award of a sole-source contract to Beech Aircraft Corporation under request for proposals (RFP) No. DAAJ090-93-R-0007, issued by the United States Army Aviation and Troop Command, Department of the Army, for a basic quantity of three C-12F Huron aircraft and an option quantity of 26 items. A synopsis of the proposed sole-source award to Beech was published in the Commerce Business Daily (CBD) on February 22, 1993.¹ According to the agency, the decision to proceed with a sole-source award was because the government does not own the technical data required to purchase the item from sources other than Beech using full and open competitive procedures. The CBD synopsis identified Beech as the sole-source contractor for the requirement.² A footnote referenced in the CBD synopsis provided that offerors had 45 days to identify their interest and capability to respond to the requirement. The RFP subsequently was issued on May 14, 1993, and the closing date for receipt of proposals was June 18, 1993.

¹The agency's requirement previously was synopsized in the CBD on November 4, 1992; this synopsis was deleted in its entirety by a subsequent synopsis in the CBD on November 19, 1992.

²In March 1993, the agency executed a justification and approval (J&A) for other than full and open competition for this requirement. The J&A stated that Beech is "the prime manufacturer" of the non-developmental item and that Beech "is the only known source possessing the skills, data, equipment or processes necessary to provide the required effort/hardware." See 10 U.S.C. § 2304(c)(1) (1988); Federal Acquisition Regulation (FAR) § 6.302-1(b)(1)(i). The J&A explained that Beech, not the government, owns the technical data required for the item's production.

In its protest filed with our Office on April 8, 1994, Piaggio contends that its item would meet or exceed the agency's needs and, for this reason, argues that the agency should compete the requirement instead of making a sole-source award to Beech. However, in its protest, Piaggio admits that it never submitted any evidence of its interest and capability to respond to the requirement as outlined in the agency's February 1993 CBD synopsis.

The Competition in Contracting Act of 1984 requires agencies to achieve full and open competition through the use of competitive procedures. 10 U.S.C. §§ 2301, 2304(a)(1). The law requires agencies, prior to making a sole-source acquisition, to publicize their intention to do so in order to provide those who believe they can satisfy an agency's requirements the opportunity to demonstrate to the agency that they can do so and that a sole-source procurement is not warranted. 10 U.S.C. §§ 2304(c)(1), (f); FAR § 6.302-1; see WSI Corp., B-220025, Dec. 4, 1985, 85-2 CPD ¶ 626.

The publication of a proposed sole-source procurement in the CBD constitutes constructive notice to potential offerors of a solicitation and its contents. S.T. Research Corp., B-232751, Oct. 11, 1988, 88-2 CPD ¶ 342. The CBD notice gives offerors the opportunity to identify their interest and capability to respond to the requirement within 45 days. A protester is required to submit a timely expression of interest in fulfilling the potentially sole-source requirement in response to the CBD notice as a prerequisite to filing a protest; if the agency rejects the protester and proceeds with its sole-source approach, the protester then must file its protest within 10 days after it knows, or should have known, of the rejection. Fraser-Volpe Corp., B-240499 et al., Nov. 14, 1990, 90-2 CPD ¶ 397. By proceeding in this manner, an agency is given an opportunity to consider an offeror's preliminary proposal in order to decide whether to open a procurement to competition, while allowing only serious potential offerors an opportunity to challenge the agency's sole-source decision. Id.

Here, we will not consider Piaggio's protest concerning the proposed sole-source award to Beech because, as Piaggio admits in its protest, it did not submit any expression of

interest in response to the agency's February 1993 CED synopsis. Id. Therefore, we consider Piaggio's protest untimely.

Accordingly, the protest is dismissed.



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